

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 166 of 1997  
with  
CIVIL APPLICATION NO. 3778 of 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARVINDBHAI NANJIBHAI NAGRECHA

Versus

VIRPUR GRAM PANCHAYAT

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Appearance:

MR YS LAKHANI for Appellant.

M/S THAKKAR ASSOC. for Respondent No. 1

MR P.B.MAJMUDAR for respondent no.2.

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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 08/09/97

ORAL JUDGEMENT

This appeal is directed against the order dated March 31, 1997 passed by the learned Joint Civil Judge (S.D.) Gondal, rejecting the Application for interim injunction, (Ex.4) in Special Civil Suit No. 38 of 1997.

2. The appellant-plaintiffs filed the present suit for challenging the decision of respondent No.1- Virpur

Gram Panchayat to renew the contract for collection of octroi in favour of respondent no.2 -Ijaradar for the year 1997-98 without giving any public notice or advertisement inviting bids for such a contract for the year 1997-98.

3. It is an admitted fact that respondent no.2 was given contract for collection of octroi by the respondent gram panchayat for the previous year i.e.1996-97 after giving a public advertisement in the news-papers inviting offers for octroi ijara for one year and the upset price was fixed at Rs.13,50,000/- as per the price determined by the Taluka Development Officer, Jetpur taluka, District Rajkot. The contract for the year 1996-97 was given to respondent no.2 for an amount of Rs.15,66,000/-. The respondent gram panchayat has renewed the contract for Octroi Ijara in favour of respondent no.2 for this year i.e. 1997-98 for an amount of Rs.16,25,000/-.

4. After hearing the parties the trial Court disposed the interim injunction application on the ground that the contract was given by the gram panchayat in favour of respondent no.2 for the year 1996-97 after following the procedure and issuing a public advertisement and that the contract for the year 1997-98 was merely a renewal of the existing contract in response to the representation made by the village people and therefore, the action of the gram panchayat was not arbitrary. The trial Court also held that the appellant-plaintiff had an alternative remedy of preferring appeal before the District Panchayat and, therefore, the plaintiff was not entitled to get any interim relief from the Court.

5. Mr.Lakhani,learned Advocate for the appellant-plaintiffs has submitted that the aforesaid decision of the gram panchayat was in flagrant violation of the normal rule that a public authority should award or renew such contract after issuing a public advertisement inviting applications from all eligible persons and also in clear defiance of the instructions given by the Taluka Development Officer requiring the gram panchayat to follow the same procedure even while giving contract for the year 1997-98. These grounds were urged on behalf of the appellant-plaintiff before the trial Court also.

6. On the other hand Mr.Kavina for the respondent gram panchayat has submitted that the contract for the year 1996-97 was given to respondent no.2 after following the procedure of issuing public advertisement and after

holding an auction at which respondent no.2 offered the highest bid of Rs.15,66,000/- which was well above the upset price of Rs.13,50,000/-and that the plaintiff had admittedly not made any offer at that auction. Thereafter when the question of awarding contract for the year 1997-98 came up for consideration, the gram panchayat received a representation from the local village traders that respondent no.,2 may be continued as octroi ijaradar. It was further submitted that the trial Court had issued a notice in the present suit under Order 1 rule 8 CPC and public notice to that effect was published in the newspapers but no body had come forward to support the plaintiff (nor did any one came forward to support the panchayat in the present suit.). Mr. Kavina for the respondent gram panchayat further raised the contention before this Court that the plaintiff had not given any notice as required by the provisions of Section 270 of the Gujarat Panchayats Act,1993.

7. On the question of notice, the Supreme Court has held in the case of J.N.Ganatra Vs. Morvi Municipality, AIR 1996 SC 2520 that if impugned action is illegal on the face of it, it cannot be said to be an act under the Act or purported to be under the Act and,therefore, the bar of limitation or notice cannot operate against the plaintiff in such a case. Hence the preliminary objection raised by Mr. Kavina deserves to be rejected in view of the discussion on merits that follows. Moreover, the plea of alternative remedy of appeal to the District Panchayat is rejected as this Court has already entertained the appeal in April 1997 and the contract under challenge is only for the period upto March 1998. Hence this Court has not thought it fit to throw out the appeal at this juncture on the ground of alternative remedy.

8. As far as the merits of the matter are concerned, the trial Court was not right in rejecting the interim injunction application by holding that the decision of the respondent gram panchayat was legal and that it was entitled to renew the contract merely because some village people made a representation to extend the contract in favour of respondent no.2. As per the settled legal position, when a public authority awards a contract of this nature the normal rule is that a public advertisement should be given and all eligible persons should be given opportunity to offer their bids. There may be exceptions to this rule but it is for the respondent authority to justify the departure from the normal rule. The justification offered by the respondent panchayat in the present case cannot be said to be a

valid justification in the eye of law. Octroi is to be collected from the traders in the village who import goods in the village for sale. The traders would, therefore, normally be inclined to prefer an ijaradar who is not strict with them in collecting octroi. The representation from the village traders may at the most be a relevant aspect in so far as the conduct of Ijaradar is concerned, but it cannot be treated as a decisive factor for making departure from the normal rule. Hence the decision of the trial Court under appeal cannot be upheld.

9. The next question which arises for consideration is as to what orders should be passed by the Court at this stage when period of more than five months of the contract of 12 months has already expired and the gram panchayat has already accepted the quarterly instalment upto September 1997.

10. Mr. Lakhani for the appellant submitted that his client is prepared to offer a bid of Rs.20,00,000/per year and therefore, the contract should be cancelled forthwith and the procedure for inviting tenders should be initiated immediately and be required to be completed within three weeks so that the new contract can be given with effect from October 1, 1997.

Mr. Kavina for the respondent gram panchayat submitted that an abrupt cancellation of the contract at this stage would not be to the benefit of respondent gram panchayat as the respondent gram panchayat would have to get the upset price approved by the Taluka Development Officer and thereafter the panchayat would have to issue a public advertisement giving sufficient time to the public to give their bids and thereafter auction is to be conducted. This process is bound to take a few months' time. Moreover a contractor would normally offer his bid for the entire year taking into consideration that a part of the year may be lean period for trading activities whereas another period may be more lucrative. Therefore, the Court should not look at it as an arithmetical formula for dividing the octroi ijara amount by half with effect from October 1, 1997.

Mr. Majmudar learned counsel for respondent no.2 supported the stand of the gram panchayat and submitted that respondent no.2 should be allowed to proceed with the collection of octroi upto the contract period i.e. March 31, 1998 and respondent no.2 is prepared to abide by all terms and conditions which this Court may impose

11. Having heard the Counsel for the parties, it appears that while attempt should be made to see that the respondent gram panchayat gets maximum octroi revenue from the earliest date, at the same time in view of the practical difficulties pointed out by the learned Counsel for the respondents and considering that the suit is at the interim stage, it would be better to put the respondents to terms, rather than to bring about abrupt termination of the contract at this stage. The respondent gram panchayat has agreed to follow the procedure for awarding octroi-ijara for the year 1998-99. The question, therefore, is what arrangement should be made for the period from October 1, 1997 to March 31, 1998.

12. The offer made by the plaintiff is at Rs.20,00,000/- p.a. The difference between the contract amount of Rs.16,25,000/for the present year and the amount offered by the appellant-plaintiff comes to Rs.3,75,000/-,but since a period of almost six months is already over, the contract period from October 1, 1997 to March 31, 1998 should be taken into account, because even if the Court had accepted the request of the plaintiff and asked the gram panchayat to award a fresh contract after public advertisement, it could not have been awarded before October 1, 1997. Hence if the contract for the next year (1998-99 ) is for any amount higher than Rs,16,25,000/- the same should be adopted as a yardstick for making good the loss, if any, to the gram panchayat.

13. In view of the aforesaid discussion, in the facts and circumstances of the case, it appears to the Court to be just and proper to give the following directions:

- (1). Respondent no.2-Ijardar is permitted to collect octroi in respect of the goods being imported in the local limits of Virpur gram panchayat till March 31, 1998 on condition that respondent no.2 shall deposit an amount of Rs.two lacs with the respondent gram panchayat by September 30, 1997.
- (2). The respondent gram panchayat shall take all necessary steps for issuing a public advertisement for inviting offers for the contract for collection of octroi for the year 1998-99 as early as possible and in any case so as to complete the entire process by February 28, 1998 for awarding the contract w.e.f. April 1, 1998.

(3). The upset price for collection of octroi for the year 1998-99 shall not be less than Rs.16,25,000/-.

(4). If the amount at which the contract is awarded for the year 1998-99 is higher than Rs.16,25,000/- the same rate shall be applied for the octroi collection for the period between October 1, 1997 and March 31, 1998 and the difference shall be made good by respondent no.2 out of the amount of Rs.2,00,000/- which is going to be deposited by respondent no.1 as per the order of this Court. If any amount remains with the respondent gram panchayat after adjusting the amount as aforesaid, it may be returned to respondent no.2 subject to the result of the suit.

(5) Respondent no.2 shall within one week from today, file an undertaking before this Court that the aforesaid amount of Rs.2,00,000/- shall be deposited by him with the gram panchayat on or before September 30, 1997.

(6). If the undertaking as aforesaid is not filed or if the amount as aforesaid is not deposited within the aforesaid time limit, respondent no.2 is restrained from collecting octroi from the limits of Virpur gram Panchayat and the gram panchayat shall take immediate steps for collection of octroi and for awarding the contract for the same in accordance with law.

14. In view of the above, the appeal is partly allowed. The order passed by the trial Court is hereby set aside and is substituted by the present order.

15. The Appeal and the Civil Application accordingly stand disposed of in terms of the aforesaid directions with no order as to costs.

( M.S.Shah J. )

sharma